



National Aeronautics and
Space Administration

Principal Center for Regulatory Risk Analysis and Communication

REGULATORY ALERT

Proposed Amendments to the “Permit Hammer”

This information was prepared by NASA's Principal Center for Regulatory Risk Analysis and Communication (RRAC). An archive of regulatory alerts, summaries and other information is posted on the [website](#). If you have further questions and/or need assistance with this matter, please contact the RRAC PC Manager, Sharon Scroggins (256-544-7932, sharon.scroggins@nasa.gov).

Date [Citation]: 24 March 2010 [\[75 FR 15655\]](#)

Regulatory Agency: U.S. Environmental Protection Agency

Rulemaking Type: Proposed Rule

Title: Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)

Summary:

On 24 March 2010, the U.S. Environmental Protection Agency (EPA) issued a proposed rule [\[75 FR 15655\]](#) to address how states must permit facilities when a National Emission Standard for Hazardous Air Pollutants (NESHAP) has been vacated by the courts and how and when a source would submit a Title V permit application or revision to initiate a case-by-case maximum achievable control technology (MACT) determination. Section 112(j) of the Clean Air Act (CAA), also known as the “permit hammer,” requires states to establish case-by-case permit emission limits for hazardous air pollutants (HAPs) when a NESHAP is not in place.

CAA Section 112(j) requires that major sources in a listed category or subcategory for which EPA fails to promulgate MACT standards by established deadlines must submit permit applications beginning 18 months after the deadlines. Federal or state permitting agencies must then determine on a case-by-case basis emission limits equivalent to the limits that would apply if a MACT standard had been issued on time. The Section 112(j) rule, however, did not include the situation when a NESHAP is vacated and does not address the timing or process of permit applications. This proposed rule was developed due to confusion following the recent vacatures of the NESHAPs for the Polyvinyl Chloride and Copolymers Production (“PVC”), Brick and Structural Clay Products Manufacturing (“Brick”), Clay Ceramics Manufacturing (“Clay Ceramics”), and Industrial, Commercial and Institutional Boilers and Process Heaters (“Boiler”) source categories. The proposed rule includes minor edits to verbiage, in addition to the following substantive changes:

- Clarifies that CAA Section 112(j) applies in the case of the complete vacatur of a Section 112(d) rule establishing MACT standards for an initially listed major source category.
- Streamlines the permit application process by combining the Part 1 and Part 2 permit applications into one application.
- Adjusts the timeline for permit application submittals. Permit applications for sources affected by a NESHAP vacatur would be due within 90 days after promulgation of the final rule (rather than the previous timeline of 180 days).
- Eliminates the applicability determination requests. The current rule provides owners or operators the ability to request applicability determinations from permitting authorities if they are uncertain whether a category or subcategory applies. EPA has determined that the provisions governing applicability determinations have become obsolete because they are tied to dates and time periods in Section 112(j) that have expired. EPA also believes that applicability determinations are no longer necessary; sources should know whether or not their operations fall within a source category because the definition of source in the vacated rule should provide sufficient guidance on applicability.

The proposed amendments would immediately affect major sources previously subject to the PVC, Brick, Clay, and Boiler NESHAPs and those subject to other NESHAPs. Comments are due to EPA by 29 April 2010, unless a public hearing is requested by 14 April 2010. If a hearing is requested, written comments must be received by 14 May 2010.

Potential Impacts to NASA:

NASA Centers previously subject to the Boiler NESHAP would be required to submit permit applications to the appropriate permit authority within 90 days after the final rule is published in the *Federal Register*.

Additional Information: <http://www.epa.gov/ttn/oarpg/new.html>.